DOCUMENT RESUME

ED 164 643 UD 018 882

AUTHOR McClung, Merle Steven
TITLE Competency Testing: Potential for Discrimination.
INSTITUTION Harvard Univ., Cambridge, Mass. Center for Law and Education.
PUB DATE Sep 77
NOTE 11p.; For a related document, see UD 018 884; Not available in hard copy due to institution's restriction ; May be marginally legible due to small type
JOURNAL CIT Clearinghouse Review; p439-48 Sep 1977

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS *Basic Skills; Cultural Factors; *Educational Accountability; *Educational Legislation; Elementary Secondary Education; Graduation Requirements; *Minimum Competency Testing; *Racial Discrimination; State Legislation; Test Bias; *Test Validity

ABSTRACT

This article discusses the potential for discrimination inherent in competency-based testing and suggests some provisions which might be included in a fair competency-based program. Discussed are: (1) racial discrimination; (2) inadequate phase-in periods; (3) tests which are not reliable or have not been validated; (4) inadequate matching of the instructional program to the test; (5) inadequate remedial instruction which creates or reinforces tracking; and (6) unfair apportionment of responsibility between students and educators. Numerous studies and legislative action dealing with competency-based tests are used to illustrate this paper's argument that more valid competency testing is needed. (Author/EB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

NOV 20 1978

ED164643

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
Center for Law & Education
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

COMPETENCY TESTING: POTENTIAL FOR DISCRIMINATION

by **Merle Steven McClung***

I. INTRODUCTION

In Palm Beach County, Florida, a group of parents recently organized an out-of-school tutoring program to help some eleventh grade students prepare for the Adult Performance Level (APL) Test to be given by the Palm Beach County Public Schools. The stakes were high. Students who passed the test by the time they graduated would be awarded the traditional high school diploma. Those who did not would have to settle for a "Certificate of Attendance," and that fact would be recorded on their high school transcript.[1]

The APL Test requires a fourth or fifth grade reading level and a seventh grade comprehension level, and requires the student "to apply accrued learning in 'real life' situations."[2] The test may measure what the school never taught. One Area Superintendent stated that there had been "curriculum upheaval" during the last ten years, and basic skills were not stressed during that period.[3] Furthermore, the school indicated that it would not guarantee that all of the objectives of the APL Test would be taught in twelve years of schooling.[4] No Spanish translation of the test has been planned up to this time.[5]

A shorter version of the test was given on a trial basis last year. Based on the 70 percent pass-fail cutoff score recommended by the Superintendent of Schools, 72 percent of the county's black students would have failed the test, but only 8.3 percent of the white students would have failed.[6] When the test was given with a 60 percent cutoff score,[7] nearly one out of every five juniors failed. The Palm Beach *Post-Times* reported: "A massive disparity between the performance of whites and nonwhites reflected in a trial run of the test last year was repeated with 42 percent or 576 minority children failing as opposed to 8 percent or 282 white children."[8]

Palm Beach County is one of the many school systems in the forefront of a so-called "competency"[9] testing

* Staff Attorney (part-time), Center for Law and Education, 6 Appian Way, Cambridge, Mass. (617) 495-4666) and Education Law Consultant (part-time). The author acknowledges with appreciation the assistance of his colleagues at the Center for Law and Education: director, Robert Pressman, and staff attorneys, Richard Jefferson, Virginia Lee, Diana Pullin and Roger Rice, in the development of this article, although the article does not necessarily reflect their views in all parts.

1. Questions and Answers Concerning the APL Test, at Answers 4-6, a five-page mimeographed statement prepared by the Palm Beach County Schools (January 1977). [Hereinafter cited as Questions and Answers.]
2. *Id.*, at Answers 12, 13 and 16.
3. Palm Beach Post-Times, April 3, 1977.
4. Questions and Answers, *supra* note 1 at Answer 21.
5. *Id.* at Answer 11.
6. *Supra* note 3.
7. Under Florida's Educational Accountability Act of 1976, Fla. School Laws (1976 ed.), Ch. 229.55 *et seq.*, local districts have discretion to determine the cutoff score. The Florida Department of Education is proposing different standards for each county based on a formula of expected achievement of students in each county. The absence of a single statewide standard has been criticized as a "loophole" in the law. *See, e.g.*, Editor, *Educators Shouldn't Spoil Testing System*, Tallahassee Democrat, June 7, 1977.
8. Palm Beach Post-Times, May 10, 1977.
9. Since the legal analysis is essentially the same, this article uses the term "competency testing" in a general sense to mean tests purporting to measure basic skills and/or life-role activities. More exact terminology is offered by William Spady who defines "*competencies* as indicators of successful performance in life-role activities (be they producer, consumer, political citizen, driver, family member, intimate friend, recreational participant, or life-long learner) and distinguishes them from the discrete cognitive, manual, and social *capacities* (such as reading and computational skills, speaking ability, and motivation) that, when integrated and adopted to particular social contexts, serve as the *enablers* or *building blocks* on which competencies ultimately depend." W. Spady, *Competency Based Education: A Bandwagon in Search of a Definition*, 6 ED. RESEARCHER, at 10 (January 1977). [Hereinafter cited as *Competency Based Education.*] The terms "proficiency" and "basic skills" are often used in the same sense as "capacities."

UDO 18882

movement which is sweeping public education. The approach adopted by Palm Beach County was developed in response to a statewide concern reflected in various educational accountability acts passed by the Florida Legislature since 1971.[10] The latest of these, The Educational Accountability Act of 1976,[11] requires each school district by 1978-79 to establish standards for high school graduation that must include: (1) mastery of basic skills and satisfactory performance in functional literacy as designated by the state; and (2) completion of the minimum numbers of credits required by the district board of education. Each district is to provide for the awarding of differentiated diplomas to correspond with the varying achievement levels and competencies of graduates. The Act also requires programs of pupil progression to be based upon performance by July 1, 1977 — a provision designed to eliminate social promotions (the policy of promoting by age rather than achievement). Furthermore, a statewide testing program is authorized to test students' basic skills in grades 3, 5, 8, and 11; the results are to be used to identify needs and to assess how well districts and schools are equipping students with the minimum skills necessary to function and survive in today's society.

Statewide assessment programs were first designed simply to measure performance in certain basic skills, with the purpose of identifying the school districts or individual schools in need of help. Extensive statewide programs of this kind were adopted in Colorado,[12] Michigan,[13] New Jersey[14] and other states, as well as Florida. The modest statewide testing program authorized in Connecticut did not even permit identification by school district; it was designed instead to assess performance only by type of school (for example, urban, suburban, and rural).[15] The trend of more recent legislation, however, has been to shift the burden of poor schooling onto the student by testing each student as an individual, with the demonstration of minimal competency in basic skills being a prerequisite to a high school diploma and/or grade-to-grade promotion. Oregon has led the way with the most extensive program of this kind currently being implemented.[16]

The Education Commission of the States reports[17] that during 1975-76 eight states[18] enacted competency testing legislation and state boards of education in ten other states[19] issued rulings on the subject. Fifteen states[20] have legislation pending during 1977. In addition, many individual school districts, like Palm Beach County, have adopted their own minimal competency testing programs.[21] There is even a proposed bill before the U.S. Congress which would amend the Elementary and Secondary Education Act of 1965 to require all state agencies to establish a program of basic educational proficiency standards before they can receive funds under the Act.[22]

This emphasis on competency testing is, of course, a response to the widespread public dissatisfaction with the measurable outcome of public schooling. A number of studies indicate that, whatever definition of literacy is used, substantial numbers of Americans are not literate. One of the most recent of these studies, published by HEW, concluded that an estimated one million American youths 12 to 17 years old probably could not read as well as the average fourth grader, and thus could be called illiterate.[23] The study showed that disproportionate numbers of black youths were illiterate (15 percent), and that substantial numbers of white youths were also illiterate (3.2 percent).[24] Not surprisingly, the study also found that the rate of illiteracy correlated with family income, declining from 14 percent in the lowest income group (less than $3,000) to 0.3 percent in the highest ($15,000).[25]

Some studies exaggerate the extent of illiteracy and incompetency among minority groups. An example is the widely publicized Adult Performance Level study[26] con-

---

10. For a discussion of the Educational Accountability Act of 1971, Title 15, Florida Statutes, S.229.57, and subsequent revisions, *see* the Cooperative Accountability Project's *Educational Accountability in Four States: Colorado, Connecticut, Florida, and Michigan*, at 8-9 (December 1975), available from the Education Commission of the States, Denver, Colo. [Hereinafter cited as *Educational Accountability.*]
11. *See* Florida School Laws (1976 ed.) Ch. 229.55 *et seq.*, especially Ch. 229.814, 230.2311 and 232.24.
12. Educational Accountability Act of 1971, Colorado Revised Statutes (1971), Title 22, Art. 7, at §§123-41-1 *et seq.*, discussed and reprinted in *Educational Accountability*, *supra* note 10 at 3-7, 96-104 and throughout the report.
13. Pub. Act No. 38 (1970), Vol. 18, Mich. C.L.A. §388. 1081-1086, is discussed and reprinted in *Educational Accountability*, *supra* note 10 at 10-11, 108-109 and throughout the report.
14. Public School Education Act of 1975, New Jersey Statutes, Ch. 212, Laws of 1975, discussed and reprinted in Cooperative Accountability Project, *Legislation by the States: Accountability and Assessment in Education*, at 7 and 13-22 (December 1975).
15. Pub. Act No. 665 (1971), Conn. Gen. Stat. §10-4, discussed and reprinted in *Educational Accountability*, *supra* note 10 at 7-8, 105 and throughout the report.
16. *See* Oregon Administrative Rules: Minimum Standards (June 1976), available from Oregon State Department of Education.
17. Education Commission of the States, Update V: Minimal Competency Testing (C. Pipho ed., April 20, 1977), 30pp.
18. *Id.* California, Colorado, Florida, Maryland, New Jersey, Virginia, Washington, and Louisiana.
19. *Id.* Arizona, Georgia, Delaware, Michigan, Missouri, Nebraska, New York, Oregon, Vermont, and Idaho.
20. *Id.* Alabama, Arizona, Arkansas, California, Florida, Illinois, Kansas, Maine, Massachusetts, Minnesota, Nevada, North Carolina, South Carolina, Iowa, and Maryland.
21. *Id.*
22. H. Rep. No. 6088, introduced by Representative Ronald M. Mottl(D), would amend Title VII of the Elementary and Secondary Education Act to require states to establish a program of basic educational proficiency standards in reading, writing and mathematics as a condition to receive federal assistance under the Act. A National Commission on Basic Education would be established to review state plans and set standards. The bill does not address the notice and discrimination problems which are the subject of this article.
23. PUB. HEALTH SERVICE, LITERACY AMONG YOUTHS 12-17 YEARS, at 3 (December 1973), HEW Pub. No. (HRA) 74-1613.
24. *Id.* at 4.
25. *Id.* at 6.
26. The University of Texas at Austin, Adult Functional Competency: A Summary (March 1975) (Dr. Norwell Northcutt, Project Director). [Hereinafter cited as Texas Study.]

ducted by the University of Texas at Austin — the prototype for the Palm Beach APL Test.[27] The Texas study found that on overall competency performance in five knowledge and four skill areas, 19.7 percent of the population could be classified as "functionally incompetent" or "adults who function with difficulty," 33.9 percent could be classified as "functional adults," and 46.3 percent could be classified as "proficient adults."[28] The functional incompetence rate was 21.7 percent in reading, 16.4 percent in writing, and 32.9 percent in computation.[29] The study concluded: "Overall, approximately one-fifth of U.S. adults are functioning with difficulty."[30]

The Texas study also noted great differences between whites and minority groups. "While 16% of the Whites are estimated to be functionally incompetent, about 44% of the Black and 56% of the Spanish-surname groups are estimated to be so. Here, as with other variables that have been discussed, the differences are probably due to the relatively lower levels of income, education, job status, and job opportunity found among minority groups in this country."[31] This was only a partial explanation, however. The rate of minority incompetence was exaggerated by test norms which reflected middle class standards of competence and ignored what might be called "ghetto survival skills." Cultural bias in the APL tests is discussed in more detail below in the section on racial discrimination.

These and other studies nevertheless identify serious shortcomings of many public schools in teaching basic skills. Although there may be no consensus about whether competency testing is the best means of remedying those shortcomings, few would disagree that care must be taken to assure that programs are designed and implemented in a fair and non-discriminatory manner.

The minimal competency requirement as a prerequisite to a high school diploma is a new phenomenon in most states;[32] it is therefore difficult to identify the strongest legal arguments for or against it and even more difficult to predict the judicial response. This article will identify a number of areas where competency testing programs may discriminate against students, and will formulate some possible legal challenges against such discrimination.

The first inquiry about a competency test should be whether the test measures what was taught in school (that is, whether the test has "curricular" and "instructional" validity, as defined below). If the test measures knowledge and or skills which were never taught in school, then the test may violate substantive due process because the school rather than the students are at fault, and the students are being punished without being personally guilty. A strong Title VI claim is raised where disproportionate numbers of blacks or other minorities are adversely affected. If the test is also culturally or linguistically biased (that is, it is based upon and assumes a white, middle-class background), the Title VI claim is greatly enhanced.

The argument is much more difficult, however, if the test does in fact measure what was taught in school because the school board can then argue that: (1) the test accurately reflects the student's achievement in mastering the curriculum; and (2) the board has a right as a matter of policy to establish a curriculum which reflects the dominant culture. The curriculum should, however, reflect all aspects of a pluralistic society (or at least the extent of diversity reflected by the student population). A curriculum which is biased against blacks or other minorities should be subject to a Title VI challenge.

The question of whether the test measures what was taught is relevant to either of two general purposes of competency testing: (1) measuring students' mastery of the school's curriculum; or (2) predicting the minimal competency required in the adult world.[33] The terminology will vary from school to school; some schools will merge the two concepts by deciding that their curriculum should be based upon minimal adult competency. Where an adult competency purpose is involved, the next question in analyzing the test should be whether the test is sufficiently predictive of minimal adult competency (that is, whether the test has "predictive" validity, as defined below). Depending upon the exact nature of the competency test, other types of validity may also be relevant. A competency test lacking predictive or some other type of validity when the test is based on assumptions of such validity may be so arbitrary as to violate substantive due process.

A further question raising the issue of fairness for all students regardless of race is whether the competency testing program has an adequate phase-in period. Two or three years' notice seems inadequate for a test which measures twelve years of cumulative learning; such notice may constitute a due process violation. The legal argument is stronger where the competency test requirement carries forward the effects of past racial discrimination, as would probably be the case in most formerly segregated school districts.

These problems and legal theories will be discussed in more detail by focusing on: (1) racial discrimination; (2) inadequate phase-in periods; (3) tests which are not reliable or have not been validated; (4) inadequate matching of the instructional program to the test; (5) inadequate remedial instruction which creates or reinforces tracking; and (6) unfair apportionment of responsibility between students and educators.

---

27. The Texas research was turned over to the American College Testing Program (ACT) of Iowa City, Iowa, a test developer and publisher. ACT publishes an "Adult APL Survey" and a "Secondary APL Survey." In the Fall of 1977, ACT will market tests in each of the five content areas discussed below plus tests tailored to specifications provided by school districts. Palm Beach County Public Schools entered into a contract with ACT whereby an APL test was formulated for the school district.
28. Texas Study, *supra* note 26 at 6.
29. *Id.*
30. *Id.*
31. *Id.* at 8.
32. *Compare* new competency testing legislation discussed in this article with Regents Examination in New York State (3A *CIS*, Education Law, §§208 *et seq.*).
33. *Compare* these two purposes with Spady's distincion between *capacities* and *competencies* at *supra* note 9.

4

II. RACIAL DISCRIMINATION

Some black parents in desegregated communities see a racial motive behind competency testing. They say that competency testing was not a concern at either black or white schools until the schools in their district were desegregated, at which time competency testing was introduced "to protect standards." The effect can be resegregation within the school according to test results (or other forms of tracking) since unequal educational opportunities may cause black children to score lower than their white counterparts.

Whether or not a racial motive is involved, such practices are arguably unconstitutional in formerly segregated districts such as Palm Beach County. In comparable situations, the federal courts have held that practices which carry forward the effects of prior racial discrimination are prohibited. For example, the Supreme Court in *Gaston County, N.C. v. United States*,[34] an action brought under the Voting Rights Act of 1965, held that it was appropriate for a court to consider whether a literacy or educational requirement had the effect of denying the right to vote on account of race or color because the state had maintained separate and inferior schools for its black residents who were then of voting age. "[W]e cannot escape the sad truth that throughout the years Gaston County systematically deprived its black citizens of the educational opportunities it granted to its white citizens. 'Impartial' administration of the literacy test today would serve only to perpetuate these inequities in a different manner."[35]

Similarly, the Fifth Circuit developed the standard that the testing necessary for ability grouping could not be applied to black students for the first time in the years immediately following desegregation.[36] This "prior effects" principle arguably applies in other cases of serious injury, such as denial of grade promotion or a high school diploma.

The legal standard to be applied to other school districts (those not recently desegregated or found to be subject to prior discrimination) is less clear. As a constitutional matter, the Supreme Court held in *Washington v. Davis*[37] that the disproportionate racial impact of a test (in this case, a police department's personnel test) was not sufficient to establish an unconstitutional racial classification without proof that it reflected a racially discriminatory purpose. The Court, however, stated that such disproportionate racial impact could be *evidence* of a discriminatory purpose.[38]

In a concurring opinion, Justice Stevens noted that "the line between discriminatory purpose and discriminatory impact is not nearly as bright, and perhaps not quite as critical,"[39] as the majority's opinion suggested. "Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequence of his deeds."[40] Given the studies cited above, the natural consequence of most competency testing programs would be racial differentiation. In Palm Beach County, the trial test offered additional evidence of the probable effect of the later test.

In *Washington v. Davis*, the Supreme Court also distinguished between the constitutional standard and the Title VII standard on testing, noting that the latter was more stringent since it incorporated an effect rather than a purpose standard.[41] Thus when a test or practice disqualifies substantially disproportionate numbers of blacks in hiring and promotion decisions, the burden under Title VII shifts to the employer to validate the test or practice in terms of job performance and to show that the test or practice is sufficiently job-related.

The HEW regulations implementing Title VI of the Civil Rights Act of 1964 incorporate a similar effect (rather than purpose) standard, prohibiting practices which have the effect of discriminating against individuals on the ground of race, color, or national origin.[42] This Title VI effect

---

34. 89 S.Ct. 1720 (1969). *See also* Oregon v. Mitchell, 91 S.Ct. 260 (1970); Kirksey v. Board of Supervisors of Hinds County Miss., No. 75-2212, (5th Cir. 1977), *reversing* 528 F.2d 536 (5th Cir. 1976).
35. 89 S.Ct. 1720, at 1726 (1969).
36. McNeal v. Tate County School Dist., 508 F.2d 1017 (5th Cir. 1975); Moses v. Washington Parish School Bd., 456 F.2d 1285 (5th Cir. 1972); Lemon v. Bossier Parish School Bd., 444 F.2d 1400 (5th Cir. 1971); Singleton v. Jackson Municipal School Dist., 419 F.2d 1211 (5th Cir. 1969).
37. 96 S.Ct. 2040 (1976).
38. *Id.* at 2049.
39. *Id.* at 2054.
40. *Id.*
41. *Id.* at 2051.
42. Title VI, §601 of the Civil Rights Act of 1964 states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Regulations issued by the Department of HEW pursuant to this section state that a recipient of federal funds "may not . . . utilize criteria or methods of administration which have *the effect* of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." (emphasis added) 45 C.F.R. §80.3(b)(2).
Other parts of the regulations particularly relevant to competency testing programs include the following:
> In federally-affected area assistance . . . for general support of the operation of elementary or secondary schools . . ., discrimination by the recipient school district in any of its elementary or secondary schools in the . . . treatment of its students in any aspect of the educational process, is prohibited. 45 C.F.R. §80.5(5).
> A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin . . . (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program . . . (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program . . . 45 C.F.R. §80.3(b).

standard has been cited with approval and applied by the Supreme Court in *Lau v. Nichols*.[43] The Title VI regulations also incorporate the *Gaston County* principle[44] against carrying forward the effects of past discrimination, and add to it an affirmative obligation to take steps to remedy those effects.[45]

Application of these Title VI standards to public school testing programs is indicated by an HEW memorandum requiring schools to take steps "to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify, and place exceptional children are *selected and administered* in a manner which is *non-discriminatory in its impact* on children of any race, color, national origin, or sex . . ."[46] (emphasis added). Since virtually all public schools are subject to Title VI regulations, competency testing programs like that in Palm Beach County which have a disproportionate effect on blacks or other protected minorities should be examined in light of Title VI standards, especially where there is evidence of racial bias in the test itself or in the administration of the test.

Where competency testing programs have a disproportionate effect on Hispanic children, attorneys should also examine *Lau v. Nichols*[47] and related HEW memoranda[48] requiring public schools to take affirmative steps to remedy the linguistic exclusion of non-English-speaking children. The Palm Beach County school system has indicated that no Spanish translation of their competency test is planned at this time. Even a Spanish translation, however, without corresponding curricular and instructional modification, may not satisfy the HEW standards.[49]

The racial effect of the competency test results in part from cultural bias in the test. The different versions of APL tests and studies seek to measure an individual's ability to apply basic skills, including literacy, to adult life-role activities such as consumer, producer, and citizen.[50] This measurement is used to determine "functional competency," that is, an individual's ability to succeed in society. The higher rate of incompetence usually indicated for minorities by APL test scores is not surprising since life-role knowledge as well as basic skills are being tested, and both aspects of the exam may be culturally biased.

The Texas APL Test, the prototype for the Palm Beach APL Test,[51] is culturally biased almost by definition, since the University of Texas researchers defined incompetent adults as those whose level of mastery of competency objectives is associated with "inadequate income of poverty level or less, inadequate education of eight years of school or fewer, and unemployment or low job status."[52] The researchers admit that functional competency is "a construct which is meaningful only in a specific societal context . . . [it] is culture-bound."[53] The APL test thus does not measure an individual's competence in functioning in that part of society in which he or she lives every day, but instead attempts to measure a person's competency by the test designer's conceptions of what is required for successful functioning in middle-class America. The ability to survive in a ghetto, for example, is not measured by the test, and therefore the test results exaggerate the extent of functional incompetence among blacks and other minorities.

An APL Test guide[54] developed for the Palm Beach County Schools suggests that their APL Test is also

---

43. 94 S.Ct. 786, 789 (1974).
44. *See* text relating to *supra*, note 35.
45. 45 C.F.R. Part 80.3(b)(6)(i) provides:
> In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

45 C.F.R. Part 80.5 provides the following illustrations of prohibited discrimination:
> (i) in some situations, even though the past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the . . . recipient . . . have failed to overcome these consequences, it will become necessary . . . for such . . . recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. . . .
> (j) even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. . . .

46. HEW Memorandum by O.C.R. Director, M. Gerry, Identification of Discrimination in the Assignment of Children to Special Education (August 1975).
47. 94 S.Ct. 786 (1974).
48. HEW Memorandum by OCR Dir. J. Pottinger, Identification of Discrimination and Denial of Services on the Basis of National Origin (May 25, 1970). *See also* subsequent memoranda, Evaluation of Voluntary Compliance Plans . . . (Summer 1975), and Application of Lau Remedies (April 8, 1976).
49. A claim of linguistic discrimination could also be based upon 20 U.S.C. §1703(f) which provides that "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program;" and 20 U.S.C. §1706 which provides that "an individual denied an equal educational opportunity . . . may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate."
50. For the range of competency (*i.e.*, outcome) expectations reflected in various competency testing programs *see* W. Spady and D. Mitchell, *Competency Based Education: Organizational Issues and Implications*, 6 ED. RESEARCHER (February 1977). [Hereinafter cited as Spady and Mitchell.]
51. *See supra* note 27.
52. Texas Study, *supra* note 26 at 5.
53. *Id.* at 2.
54. A Note Concerning APL Goals, Objectives, and Tasks (March 1975), 37 pp.

culture-bound. The test guide includes many tasks which indicate a potential for discrimination in the test. For example, the "Consumer Economics" part of the test guide includes the following "comprehension" task: "To discuss the idea that just because a rich family can afford to feed, clothe, and educate a large number of children, this does not mean that the world will be able to support their children and grandchildren." One task in the "Occupational Knowledge" part asks students "to discuss proper behavior and attitudes for keeping a job." The "Health" part includes the following task: "To discuss the physical and psychological benefits gained when food is served attractively in a pleasant atmosphere." And one task in the "Government and Law" part asks students "to discuss the concept of party politics including why the two-party system has been successful."

Any functional competency test, and the curriculum on which the test is based, should reflect all aspects of a pluralistic society, or at least the extent of diversity reflected by the student population. A functional competency test given in the Miami or San Antonio public schools, for example, should include a number of Hispanic skill and content items because some cross-cultural competence is arguably necessary for successful functioning as adults in those cities. In any case, a curriculum or competency test which is biased against blacks or Hispanics should be subject to a Title VI challenge.[55]

III. PHASE-IN PERIODS

Many competency testing programs are being imposed upon students late in their secondary education with little prior notice. The Palm Beach juniors, for example, spent their first ten or eleven years in the school system without notice or knowledge that passing a competency test would be a condition to acquiring a diploma. The school system had in fact explicitly approved their progress by promoting them each year even though many of them did not have basic skill competencies. All prior classes of students had been graduated with diplomas without having to satisfy this additional requirement. It is likely that many, if not most, of these students failing the test would have studied (and teachers taught) differently in early years had they been given such notice. The competency test is designed to assure that minimal competency is acquired after twelve years of schooling, but Palm Beach juniors did not receive notice until their tenth year of schooling.

Traditional notions of due process should require adequate prior notice of any rule which could cause irreparable harm to a person's educational or occupational prospects.[56] *Mahavongsanan v. Hall*[57] provides some support for the proposition that students must be provided with adequate notice of any significant change in graduation requirements, although the Fifth Circuit found that the plaintiff in that case had not been denied procedural or substantive due process because she received "timely notice" that passing a comprehensive examination would be a prerequisite to a master's degree in education.[58]

The legal argument for adequate notice of significant changes in graduation requirements is stronger in the context of elementary and secondary public schools than in postsecondary education because courts usually apply a stricter standard of review to practices at the elementary and secondary level where education is compulsory. Notice of a competency testing requirement for a high school diploma would have to be much earlier than in the *Mahavongsanan* case because twelve rather than just two or three years of education are being tested. The plaintiff in *Mahavongsanan* received notice of the new requirement relatively early in the program (only six months after starting the program), whereas Palm Beach juniors did not receive notice until their tenth year of schooling. Whatever notice is considered adequate in this situation (first grade? fourth grade?), notice after five-sixths of one's educational program is already completed seems clearly inadequate.

IV. NON-DISCRIMINATORY TESTS

Even where students have been given adequate prior notice of the competency test requirement, the test itself may be discriminatory and illegal if it does not meet certain standards. A basic understanding of psychological testing jargon is helpful in analyzing competency tests because courts have relied on this terminology in deciding

55. Under Title VI the curriculum as well as other parts of the school program should not be designed in such a way as to exclude minority children from the benefits of participating in federally funded educational programs. *See, e.g.*, United States v. Texas, 330 F.Supp. 235, 249 (E.D. Tex. 1971); Morgan v. Kerrigan, 401 F.Supp. 216, 234 (D. Mass., 1975) where courts ordered non-discriminatory curricula as part of school desegregation plans.

56. The legal standard applied in modern substantive due process cases (under the Fourteenth Amendment of the U.S. Constitution or comparable state due process provisions) is usually not spelled out very carefully, but these cases usually invalidate state action which (1) is arbitrary or capricious, (2) does not achieve any legitimate state interests, (3) frustrates any legitimate interest the state might have, or (4) is fundamentally unfair. *See, e.g.*, discussion and cases cited in McClung, *The Problem of the Due Process Exclusion*, 3 J. OF LAW & ED., 491, 495-501 (October 1974), and subsequent cases cited in the EDUCATION LAW BULLETIN published by the Center for Law and Education, §185. Whatever the exact wording of the test under substantive due process, the general standard is that state action cannot be unreasonable, with unreasonableness being construed narrowly (*e.g.*, rational persons would not disagree).

57. 529 F.2d 448 (5th Cir. 1976).

58. Further research in education and analogous areas (welfare, social security, *etc.*) may turn up cases with more careful discussion of notice requirements in non-criminal public programs.

other cases involving questions of fair testing.[59]

The courts have usually relied upon the *Standards for Educational and Psychological Tests* developed by the American Psychological Association (hereafter "APA Standards").[60] The APA Standards define the requirements for reliable and valid tests. Simply put, *reliability* refers to whether the instrument measures accurately what it measures (for example, the instrument should yield comparable results when used at different times).[61] *Validity* refers to whether the instrument measures what it purports to measure. There are many different kinds of test validity, as indicated below, and each should be considered in relation to the exact test in question. According to the APA Standards:

> Questions of validity are questions of what may properly be inferred from a test score . . . [primarily] [w]hat can be inferred about what is being measured by the test [and] [w]hat can be inferred about other behavior? . . . The kinds of validity depend upon the kinds of inferences one might wish to draw from test scores. Four interdependent kinds of inferential interpretation are traditionally described to summarize most test use: the *criterion-related* validities *(predictive* and *concurrent); content* validity and *construct* validity.[62]

Predictive validity is a measure of how well test items predict the future performance of test takers. This type of assessment requires an analysis comparing the predictions about each test taker based on the test results with the actual functioning of the test taker at a later point in time. For example, if a high number of students which an APL test had predicted would be functionally incompetent in fact turned out to be such when studied years later, then the test could be said to have predictive validity.[63]

Concurrent validity is a measure of how well test results correlate with other criteria which might provide the same type of information about test takers. This type of assessment provides a measure of a test's immediate predictive validity, or how well determinations based upon test results correlate with other currently available information about test takers.[64]

Content validity is a measure of how well test items represent the knowledge that the test purports to measure. A test with a high degree of content validity is a test for which high test performance serves as an index of a high degree of skill or knowledge in the area which the test purports to measure.[65]

Construct validity is a measure of how well test items correlate to the theory or constructs behind the test. This assessment indicates the relationship between the theory behind the test and actual test performance. This assessment is probably the most difficult to conduct since it may be difficult to identify the constructs upon which a test is built and because a statistical analysis of

---

59. Court involvement in determinations of test validity has focused primarily on situations involving employee selection procedures and on questions of predictive validity or adequate alternatives thereto. *See, e.g.*, Washington v. Davis, 96 S.Ct. 2040 (1976), a case involving a challenge to testing practices followed by the Washington, D.C. police department in selecting individuals for its training academy. The majority opinion at footnote 13 notes the following cases involving the validation of employment tests: Albermarle Paper Co. v. Moody, 422 U.S. 405, 431 (1975); Douglas v. Hampton, 512 F.2d 976, 984 (D.C. Cir. 1975); Vulcan Society v. Civil Service Comm'n, 490 F.2d 387, 394 (2nd Cir. 1973).
Also, the same footnote indicates that the standard followed in those cases, as well as that relied upon by the Equal Employment Opportunity Commission in fashioning its Guidelines on Employment Selection Procedures, 29 C.F.R. §1607, is the standard set forth in AMERICAN PSYCHOLOGICAL ASSOC., STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTS AND MANUAL (1966) (revised and renamed in 1971).

60. *Id.*

61. *See*, AMERICAN PSYCHOLOGICAL ASSOC., STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTS, at 49 *et seq.* (1971). [Hereinafter APA STANDARDS.] In other words, the *reliability* of a test is its trustworthiness, the stability and consistency of test results over time, and the accuracy of the test score in relation to a test-taker's "true score" if the test were a perfect indicator. This assessment is conducted by administering the same test more than once to the same group of test-takers, by administering alternate forms of the same test to the same group of test-takers at two separate times, or by administering in immediate succession two different forms of the test to the test-takers. In each case, statistical comparisons of results on each administration of the test are made.

62. APA STANDARDS, *supra* note 61 at 25-26.

63. *For example*, an analysis of the predictive validity of the Palm Beach APL would require administration of the test to a group of high school-aged students with each student being given a score which could be interpreted as a prediction of the student's future "functional competency" as an adult. Then, the same group of students would be looked at several years later to determine, on the basis of each student's attained economic and educational status, whether the prediction was correct. *See* APA STANDARDS, *supra* note 61 at 26-28.

64. *For example*, an analysis of the concurrent validity of the Palm Beach APL would require that test results on this year's administration of the test be compared with other current information available about the test-takers which is similar. This comparison might be made by determining the degree of correlation between the test scores and students' grades. However, this comparison would only be meaningful if student grades were a measure of academic achievement only (and did not include, for example, some weighting of "good conduct," "effort," *etc.*). Also, the comparison would be meaningful only if the curriculum actually provided instruction on the topics covered by the APL test (*see* the discussion of curricular and instructional validity *infra.*)

65. *For example*, an analysis of the content validity of the Palm Beach APL would require a comparison of the test items with the skills and knowledge defined as necessary for "functional competency" to assess whether or not the test items can logically be said to be measures of that skill and knowledge. *See* APA STANDARDS, *supra* note 61 at 28.

the interrelationship of test items may be required.[66]

The point here is not to attempt a technical evaluation of the APL Test itself, but rather to emphasize the need for such evaluation before this kind of test is used as a basis for promotion or graduation. In a carefully considered article on competency-based education, William Spady of the National Institute of Education draws attention to the technical obstacles to "reliable, valid and timely measurement of applied role performance. The technology surrounding the assessment and measurement of success in life role activities is only in its infancy, even though the rush toward adopting [competency based] programs is upon us."[67] In addition to the concepts mentioned above, any technical evaluation of a competency test should also include an appraisal of its curricular and instructional validity, as discussed in the next section.

V. MATCHING THE TEST WITH THE INSTRUCTION

Most people would agree that fairness requires that a school's curriculum and instruction be matched in some way with whatever is later measured by the test. The test would be unfair if it measured what the school never taught. This concept is not included in the APA Standards,[68] but is of primary importance in considering the validity of any competency test.

Curriculum validity is a measure of how well test items represent the objectives of the curriculum to which the test takers have been exposed.[69] An analysis of the curriculum validity of the Palm Beach APL Test would require a comparison of the APL objectives with the course objectives of the Palm Beach schools, as these objectives exist currently and existed during the eleven years that this year's group of test-takers have been in school. If the curriculum is not and was not designed to teach functional competency, it is not appropriate to deny individual students their diploma because they did not learn to be functionally competent. In this situation, failure on the competency test should reflect on the schools which are not offering an appropriate curriculum (assuming, of course, that the objectives, skills, and knowledge specified by the competency test are indeed appropriate curricular objectives for the particular school).

It would also seem appropriate to demand of any competency test another type of validity, which might be termed instructional validity.[70] Even if the curricular objectives for the school correspond with the competency test objectives, there must be some measure of whether or not the school district's stated objectives were translated into topics actually taught in the district's classrooms. Test items should measure topics taught. If test items do not reflect actual content of instruction, then the competency test should not be used as a high school graduation requirement for individual students, but rather as a general survey instrument to be employed in curriculum planning and development.[71] While a measure of curricular validity is a measure of the theoretical validity of the competency test as an instrument to assess the success of students, instructional validity is an actual measure of whether the schools are providing students with instruction in knowledge and skills measured by the test. Thus, an analysis of the instructional validity of a competency test would require a comparison of the test items and objectives with actual course offerings in the school district.

A competency test measuring life-skills and used as a basis for denying a diploma when such skills were never taught in the school is arguably so arbitrary as to violate due process of law.[72] A competency test lacking

66. *For example*, an analysis of the construct validity of the Palm Beach APL would require "the formulation of hypotheses about the characteristics of those who have high scores on the test in contrast to those who have low scores. Taken together, such hypotheses form at least a tentative theory about the nature of the construct the test is believed to be measuring ... Such hypotheses of theoretical formulations lead to certain predictions about how people at different score levels on the test will behave on certain other tests or in certain defined situations. If the investigator's theory about what the test measures is essentially correct, most of his predictions should be confirmed." *Id.* at 30. It would appear that the constructs behind the original APL test were that there are certain skills and knowledge esential for success as a competent adult and that these can be measured on a two-dimenstional model which simultaneously assesses skills and content knowledge. *Id.*

67. *Competency Based Education*, *supra* note 9 at 11; *see also* George Madaus and Peter Airasiam, *Issues in Evaluating Student Outcomes in Competency Based Graduation Programs*, 10 J. OF RES. & DEV. IN ED., 79-91 (Spring 1977).

68. The APA limits its discussion of validity standards to consideration of the concepts of criterion-related validities, content validity and construct validity. Most probably, this limitation occurs because the standards are promulgated primarily to regulate the conduct of organizations which develop and market tests and organizations which purchase those tests. Also, the standards are written by test designers and institutional users. These two factors may explain why the APA Standards do not include some considerations which are important to test takers.

69. W. DICK & N. HAGERTY, TOPICS IN MEASUREMENT: RELIABILITY AND VALIDITY, at 96 (1971); and L. CRONBACH, ESSENTIALS OF PSYCHOLOGICAL TESTING, at 397 (1960).

70. The discussion in this article of the various types of test validity was developed with the assistance of Diana Pullin, Center for Law and Education. Since neither the APA Standards nor the educational literature generally seem to address the issue of matching the test with actual instruction (especially important in the fair administration and assessment of any minimal competency program), the concept of "instructional validity" was developed for this purpose by the author. Instructional validity obviously does not require prior exposure of the student to the exact questions asked on the test, but it does require actual exposure of students to the kind of knowledge and skills which would enable a student to answer the test questions. This will present difficult proof problems in some cases; in others, it will be easy to show that the test is measuring what the school never taught.

71. ACT, *supra* note 27, states that their "Adult APL Survey" and "Secondary School Survey" were designed "to be used primarily as aids in curriculum planning and development or in the determination of the need for additional instruction." AMERICAN COLLEGE TESTING PROG., USER'S GUIDE: ADULT APL SURVEY, at 2 (1976).

72. *See supra* note 56.

curricular or instructional validity may also violate substantive due process because the school rather than the student can be faulted for poor performance on the test.

In an analogous case, the Fifth Circuit held that a school board regulation violated substantive due process because it allowed school children to be suspended for their parent's misconduct:

> [T]he children do not complain that they were denied the constitutional right to an education, but that they were punished without being personally guilty. Thus a cardinal notion of liberty is involved and substantive due process is applicable.[73]

Since the practice established "a significant encroachment upon a basic element of due process," the court required the school to meet "a substantial burden" to justify this encroachment, including proof that reasonable alternative means to achieve the stated objective were not available.[74]

There is evidence that the Palm Beach County API Test lacks both curricular and instructional validity. One Area Superintendent stated that basic skills were not stressed in the schools during ten years of curriculum upheaval. Perhaps many schools could show that their instructional programs have in fact been geared to the basic literacy skills measured by their versions of the competency test, but this may not be true of many "adult performance level" tests which measure content knowledge in addition to literacy. A somewhat different perspective on the same problem is provided by William Spady: "[T]he choice of goals may have a major impact on established instructional practices, particularly when life-role competencies imply exposure and activities that are either inadequately provided by or poorly simulated in classroom or formal school contexts and when teaching staff may lack the competence or versality to facilitate certain goals."[75]

VI. REMEDIAL INSTRUCTION

Some kind of remedial instruction should be provided as part of any competency testing program. Most competency testing programs, however, do not make adequate provision for any kind of instruction. "[I]n only eight states (California, Colorado, Georgia, Nebraska, New Jersey, Oregon, Pennsylvania, and Virginia) do either current or pending regulations seem to suggest that some kind of instructional experiences need to be provided students to facilitate their performance in desired outcome areas."[76] Florida should be added to this list because its statutes now provide:

> The first priority of the public schools of Florida shall be to assure that all Floridians, to the extent their individual physical, mental, and emotional capacities permit, shall achieve mastery of the basic skills.[77] Each district shall develop procedures for the remediation of [the deficiencies of] those students who are unable to meet such standards.[78]

The Florida legislature has also passed a bill providing limited funding for remedial programs,[79] but has not elaborated upon the kind of programs of instruction and remediation that are necessary. Important questions concerning the extent of local district commitment of time and resources are left unresolved. The Palm Beach program includes a summertime remedial component. This year's juniors will have three additional opportunities to pass the test. This would not appear, however, to provide either adequate remediation or adequate notice for a test of twelve years' cumulative learning.

A model program should provide for multiple evaluation, learning, and remedial opportunities.[80] It should create a continuing re-responsibility of the school and/or state to provide further remedial education and test opportunities at any point after leaving school for those former students who have sufficient motivation to try again to pass the test. A model program should also ensure that students who do not pass the test are not tracked in all courses just because some remedial instruction is necessary.[81] The legal limitations on tracking a disporportionate number of minority students have been summarized above.[82]

VII. SHARED RESPONSIBILITY

The shift in emphasis mentioned above from competency testing programs used to identify problem areas to competency testing which is a requirement for a high school diploma raises the question of whether the full burden of unsatisfactory performance should be placed on students. Learning is a two-way street with students and educators sharing joint responsibility.

Spady stresses "the central role of student performance data in the management and evaluation of all

---

73. St. Ann v. Palisi, 495 F.2d 423, 476 (5th Cir. 1974).
74. *Id.* at 426-27.
75. *Competency Based Education*, *supra* note 9 at 11. For a complete description of the ways in which conventional curriculum and instruction are not well matched with competency based tests, *see*, Spady and Mitchell, *supra* note 50 at 9-10, 13.
76. Spady and Mitchell, *supra* note 50 at 13.
77. Fla. School Laws, Ch.230.2311(1) (1976 ed.).
78. Fla. School Laws, Ch.232.245(3) (1976 ed.).
79. The Florida Compensatory Education Act of 1977, S.B. No. 30-A (1977), signed by the Governor on June 23, 1977, provides $10 million for this purpose. The amount is inadequate in view of the numbers of students needing compensatory programs.
80. *See, Competency Based Education*, *supra* note 9 at 10.
81. Compensatory programs can be integrated or coordinated with regular programs so that students needing such help are not separated and stigmatized by a separate track.
82. *See* text relating to *supra* note 36.

elements in the system" because ". . . students' performance in relation to outcome goals may be a reflection not only of their ability and endeavor but of the adequacy and appropriateness of the instruction provided, the evaluation tools used, or the goals themselves."[83] He also notes that "the delicate balance between student and system accountability" is usually overlooked by the states that are "jumping on a [competency-based] bandwagon under the assumption that toughening certification standards for students will satisfy the public's need for school system accountability."[84]

Similarly, it is interesting to note the apparent inconsistency of some teacher unions which argue that competency and other standardized testing should be used as one useful criterion (rather than the sole criterion) in assessing student performance, but should never be used even as one criterion in evaluating teacher performance (for example, tenure decisions).[85] This raises the question of what a model statute providing for joint responsibility would look like.

VIII. BROADER ISSUES

The single-criterion assessment of students mentioned in the previous section raises broader questions. Single-criterion evaluation of students, teachers, and public education as a whole seems short-sighted. First, the state of the art is not sufficiently developed to warrant such exclusive reliance on competency-based evaluations. Second, and more important, the primary goals of public education arguably are or should be broader than those reflected by minimal competencies, and students, teachers, and public education generally should not be evaluated exclusively by these narrow measures.

This issue is subject to considerable difference of opinion, as illustrated by California's early-exit program which allows students to graduate from high school upon passing a minimal competency test.[86] It is also illustrated by the fully based competency program projected by Spady.[87] Do such programs sell public education short? Even given a strong commitment to a broader view of public education, there is always the danger that the minimal standards will become maximums rather than minimums. As in other areas,[88] however, the need for establishing minimum standards has been demonstrated, and safeguards can be developed to assure that broader goals are not bypassed.

Competency-based education clearly raises many far-reaching issues. A comprehensive program would necessitate considerable restructuring of education, and would have important implications for grouping, student discipline, and other areas of public education which are too numerous and complex to be discussed in this article.[89] Any competency-based program also necessitates implicit or explicit decisions about performance objectives and educational goals. Given the crucial importance of these decisions, a model program should provide for representative community-based participation in the decision-making process.[90]

IX. CONCLUSION

In discussing the potential for discrimination inherent in competency-based testing, this article has also suggested some provisions which might be included in any competency-based program designed to be administered fairly, with students and schools sharing responsibility for performance. At the very least, the basis for determining credit under an equitable competency program must, in Spady's words: (1) be reflected in clear and specific criterion-referenced outcome statements that are (2) directly embodied in the instruction and evaluation of students and (3) known by them prior to their engagement in a given arena of work."[91]

This article is introductory. As more and more states start to implement their versions of competency-based education, the potential unfairness of the programs, including but not limited to racial and socio-economic discrimination, is becoming more apparent. The Center for Law and Education is interested in developing in more detail the kinds of legal theories and model program alternatives summarized in this article. Legal Services attorneys and others who share these concerns are encouraged to share their experience and suggestions with the Center.

---

83. *Competency Based Education*, *supra* note 9 at 12.
84. *Id.* at 12 and 13.
85. *See, e.g.*, the results of a survey of the American Federation of Teachers (AFT) Task Force on Educational Issues reported in Bhaerman, *What Do Teachers Think About Tests and Testing?*, AMERICAN EDUCATOR, at 14 (Winter 1977).
86. S.B. No. 1112 (1972) and S.B. No. 1243 (1975) provide for the California High School Proficiency Test. Upon successful completion of the test, 16 and 17 year-old students may be awarded a proficiency certificate legally equivalent to a high school diploma. They may leave high school if they pass the test and receive parental permission. S.B. No. 1502, Ch. 315 (1976), changes the "early out" minimal competency test program by making it available to citizens over the age of 18. Another act, A.B. No. 3408, Ch. 856 (1976), requires districts to establish proficiency standards, and provides that no student can receive a high school diploma after June 1980, unless the student passes a proficiency test.
87. A fully-based competency program would eliminate attendance and other criteria for grading and rely exclusively on demonstration of competency. *See Competency Based Education*, *supra* note 9 at 12. Such a program, however, does not necessarily imply narrow goals and performance objectives subject to the limitations of quantifiable measurement. *Id.* at 14, n.6.
88. *For example*, compare bar and medical examinations or examinations for driver's licenses.
89. *For example*, Spady notes that competency based education can "fundamentally undermine the potential use of evaluation (testing and grades) as a mechanism for the control of student behavior . . . The use of assignments or tests as surprises or threats is dramatically reduced when . . . the expectations for performance are clear and known by students in advance." *Competency Based Education*, *supra* note 9 at 12. For more detailed discussion, see Spady and Williams, *supra* note 50 at 11-14.
90. Community representation is required under many state accountability statutes, but the nature and extent of representation is not often specified. *See, e.g.*, New Jersey's statute, *supra* note 14.
91. *Competency Based Education*, *supra* note 9 at 10.